IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STEELWORKERS OF AMERICA, AFL-CIO, Plaintiff,	)	
v.	)	Civil Action No. 89-1491
NATIONAL ROLL COMPANY, Defendant.	)	

R E P O R T

GARY L. LANCASTER,
United States Magistrate

This is an action to compel arbitration of a contract dispute between plaintiff United Steelworkers of America ("Union") and defendant National Roll Company ("National Roll"). Jurisdiction is predicated on section 301 of the Labor Management Relations Act of 1947 ("LMRA"), as amended, 29 U.S.C. § 185(a). Before the court are the parties' cross-motions for summary judgment. For the reasons set forth herein, the Union's motion for summary judgment should be granted and defendant ordered to submit the pending dispute to arbitration.

I. BACKGROUND

The Union is the exclusive bargaining representative for certain hourly employees of National Roll. Plaintiff and defendant are both parties to a collective-bargaining agreement ("labor agreement"), effective July 1, 1986 through December 31, 1989.

Section 6 of the labor agreement, "Adjustment of Grievances," sets forth a procedure for internal resolution of disputes "[s]hould differences arise between the Company and the Union or its members as to interpretation or application of, or compliance with the provisions of this Agreement[.]" In the event the internal dispute resolution procedure does not resolve the conflict, section 6 also provides that "the matter shall then be appealed to an impartial umpire [arbitrator] to be appointed by mutual agreement of the parties hereto."

Germane to the action is section 16 of the labor agreement. This section, entitled "Profit Sharing," provides for hourly rated employees to share in the profits of National Roll.[1]

---

1. Relevant portions of section 16 read as follows:

> SECTION 16
> PROFIT SHARING
>
> Objective
>
> The objective of the program is to share the profitability of the National Roll Company. National Roll Company includes the operations of National Roll Company, Delaware Corporation, located at Avonmore and Beaver Run, Pennsylvania. The bonus is to be calculated and paid in t segments, one quarterly and one annually based upon operating earnings.
>
> * * *
>
> Annual Review
>
> If requested by the Union, the Company will provide fo a review of the program on an annual basis. Such reviews will be performed by the independent public accounting fir elected by shareholders of Lukens, Inc. at their annual

(continued...)

Section 16 also provides for an Annual Review of the program by an independent accounting firm, if so requested by the Union.

Additionally, but separate from the labor agreement, the Union's members were covered by a pension plan called "National Roll Division, Lukens General Industries, Inc. Pension Plan For Hourly Rated Employees at the Avonmore, Pennsylvania Plant" ("pension plan").

Before 1987, the stock of National Roll was entirely owned by GSI Engineering, Inc., a wholly owned subsidiary of Lukens, Inc. (referred to collectively as "Lukens/GSI"). On May 8, 1987,

---

1. (...continued)
meeting. Their review will encompass agreed upon procedur applied to the calculation of amounts due pursuant to this program.

* * *

If the Union requires a separate review of the calculation of operating earnings or losses, the Company will make the books of the National Roll Company available to a selected accounting firm for review. This firm will provide a statement to both parties concerning whether the operating earnings of losses utilized in the calculation o the profits eligible for distribution under the program ar fairly presented.

* * *

If after this review the parties cannot agree, a third firm, from the types of firms mentioned above, would be selected by mutual agreement of the parties to review any outstanding issue. The cost of this review would likewise be shared one-half by the Company and one-half by the Unio

Lukens/GSI entered into an agreement to sell all of the National Roll stock to a third party. In conjunction with the sale, the pension plan was terminated June 30, 1987. Thereafter, the surplus assets in the pension plan--some $3.3 million--reverted to Lukens/GSI, apparently in compliance with the terms of the pension plan and/or the sales agreement.

In November, 1987, the Union filed a grievance with National Roll. The Union alleged that National Roll's profit sharing report for the third quarter of 1987 failed to include the surplus assets[2] realized from the termination of the pension plan. When the parties failed to resolve this dispute internally, the Union demanded that the dispute be submitted to arbitration. National Roll refused; hence, this suit.

II. DISCUSSION

A.

The principles which govern this dispute are well settled. "[A]rbitration is a matter of contract, and a party can not be required to submit to arbitration any dispute which he has not agreed so to submit." United Steelworkers of America v. Warrior and Gulf

---

2. We use the term "surplus assets," rather than "profits," to identify the monies at issue so as not to give the wrong impression that the court has determined the nature of those monies as it relates to this case.

Navigation Co., 363 U.S. 574, 582 (1960). The issue of arbitrability is "a matter to be determined by the courts on the basis of the contract entered into by the parties." Atkinson v. Sinclair Refining Co., 370 U.S. 238, 241 (1962). The Supreme Court has established a "strong presumption" in favor of arbitration. Nolde Brothers, Inc. v. Local 358, Bakery & Confectionery Workers Union, 430 U.S. 243, 254 (1977). Any ambiguity concerning the parties' contractual duty to arbitrate their grievances must be resolved in favor of arbitration. Lehigh Portland Cement v. Cement, Lime, Gypsum, and Allied Workers Division, 849 F.2d 820 (3d Cir. 1988). Finally, where a contract contains an arbitration clause, the presumption of arbitrability is such that an order to arbitrate a grievance should not be denied "unless it may be said with positive assurance that the arbitration clause is not susceptible of interpretation that covers the asserted dispute." Beck v. Reliance Steel Products Co., 860 F.2d 576, 579 (3d Cir. 1988).

B.

In its motion for summary judgment, the Union argues that its profit sharing grievance, and consequent demand for arbitration, is clearly subsumed by the terms of the labor agreement and that there is no issue of material fact which would obstruct the granting of its motion. National Roll asserts that the

parties intended to exempt profit sharing disputes from the labor agreement's arbitration provisions. According to National Roll, the Annual Review was intended to be the exclusive method for resolution of profit sharing disputes, not arbitration. In support of its position, National Roll points to the language of the profit sharing section of the labor agreement as well as to affidavits and documents of record.

We have reviewed the affidavits and letters submitted and, viewed in the best light, we do not find them to be conclusive evidence of an agreement to remove from arbitration a dispute over entitlement to profit sharing. The affidavit of Steven Lucy is purely a self-serving statement and does not establish National Roll's position. Similarly, the letters from officers of the Union do not conclusively show that it intended a dispute, such as the one before the court, to be resolved through the Annual Review procedure.

Further, we have reviewed the language of the labor agreement. Section 6 provides for arbitration of "differences . . . as to interpretation or application of, or compliance with the provisions of this Agreement [.]" Section 6 does not exclude profit sharing disputes nor does section 16 indicate the parties intended the Annual Review procedure to be final and binding, or a substitute to arbitration.

Were we to accept National Roll's position, we would necessarily have to conclude either that the Union intended to limit its future disputes about profit sharing only to issues of accountant reliability or accuracy, or that the parties intended to submit complex issues of labor law and contract interpretation to an accounting firm for resolution. Neither of these necessary conclusions are supportable. The parties to this agreement are both sophisticated and experienced in the field of labor law. Had they intended that the Annual Review by an accounting firm was to be the exclusive method of resolving disputes over the profit sharing provisions of the labor agreement, they would have expressly said so. We are left with one realistic conclusion, that a dispute such as the one at issue here is not exempt from section 6 arbitration procedures.

C.

Finally, National Roll also argues that since the pension plan was separate and apart from the labor agreement, a decision regarding the appropriate disposition of pension plan assets upon termination is not governed or otherwise subject to the profit sharing provisions of the labor agreement. Further, the parties intended that only profits earned from operations, rather than all sources of income, were to be included in the profit sharing plan. We will not dwell on this further, for to do so would require the court to engage in a discussion of this case on its merits, which we are forbidden to do at this juncture. Beck v. Reliance Steel, 860 F.2d at 579. We need only state that, based on our review, the Union's claim is not so attenuated as to be frivolous or a blatant manipulation of the court's authority to order arbitration. Id. Regardless of the ultimate merits of the Union's underlying claim, it has asserted a colorable claim for profit sharing which is subject, in the first instance, to the contractually agreed upon duty to arbitrate.

Accordingly, plaintiff's motion for summary judgment should be granted and defendant's motion denied.

United States Magistrate

Dated: May 3, 1990

cc: All Counsel of Record